

Senator THURMOND. 18 minutes.

The CHAIRMAN. 18 minutes?

Senator THURMOND. That is what I understood; 48 minutes is what I heard; 48 minutes, that is what they said.

The CHAIRMAN. Well, Senator, you can have 53 minutes if you would like.

Senator THURMOND. I don't care for any more. We will just cut yours the next time. [Laughter.]

The CHAIRMAN. All right. Here we go. The Senator from South Carolina.

Senator THURMOND. Thank you, Mr. Chairman.

Judge Thomas, in a 1988 article in the Harvard Journal of Law and Public Policy, you stated, and I quote, "To believe that natural rights thinking allows for arbitrary decisionmaking would be to misunderstand constitutional jurisprudence based on higher law."

Now, the question is: Is it your belief that cases that come before the Court must be interpreted according to precedent, the law, and the Constitution?

Judge THOMAS. That is the case, Senator. I think it is important for any judge to recognize that when he or she is engaged in adjudication that you must start with the text and structure of the document. And, of course, it is important in some of the open-ended provisions and constitutional adjudication to look to our history and our tradition.

I think that the importance of doing that is not so much to restrain or constrain, as I said before, the development of important rights and freedoms in our society, but rather to restrain judges so that they do not impose their own will or their own views or their own predispositions in the adjudication process.

Senator THURMOND. Judge Thomas, you said in your opening statement that you benefited greatly from the efforts of certain civil rights leaders. You further said that but for them, there would be no road to travel. Could you generally describe how you benefited by the efforts of certain civil rights leaders?

Judge THOMAS. Senator, I speak with caution. I guess I have spent so much time on my own biography that it may be a matter of concern. But let me just make this point.

There were any number of friends of mine whom I considered when I grew up to be much, much more talented. There were individuals who had enormous ability to remember, individuals who had tremendous capacity with numbers, and you wonder whether or not they would have gone on and become physicists or writers or business persons, what have you.

But somehow, with the impediments—impediments that said you couldn't go to a library, that you could not go to certain schools, that you could not walk across certain parks, go into certain neighborhoods, impediments that said that you could be picked up and put on the chain gang for just standing on the corner—somehow with all those impediments, any number of them were prevented from moving on. Relatives, friends—my grandfather is a perfect example. Enormously talented man.

Unless someone removed those impediments, unless there was a civil rights movement, not all the talent in the world would get me here or get me actually even out of my neighborhood in Savannah.

That is the point; that the civil rights leaders opened the doors, that the civil rights movement opened the doors that permitted individuals like myself to then move on.

My further point was this, and that is that when others, either directly or indirectly, in a broad or a specific way, make the effort to create these opportunities, then I believe that I have an obligation and I believe that others have an obligation to repay them by taking full and complete advantage of those opportunities. As Martin Luther King said, we have to burn the midnight oil. And I think it is important to repay individuals, individuals with those kinds of efforts. And I have tried to do that, and I would encourage others to try to do that and remember those leaders and remember what they gave for us to have these opportunities.

Senator THURMOND. Judge Thomas, I often ask potential judges for their comments on the topic of judicial temperament. How important do you believe this quality is in a judge? And what are your views on this topic?

Judge THOMAS. Senator, I think it is important, actually critical for a judge to be able to listen, to be open to the arguments, to be open to the different points of views, to look for all arguments on all sides, to explore them in depth, not to reject any.

I think the essence of temperament is that receptivity and that openness, because, as I said, before the process is over, a judge has to feel that he or she got the decision right, and there is no better way to get it right than to allow the adversarial process to work to its fullest, and you can do that by having the temperament and the receptivity and the openness throughout the process, so I would say it is critical.

Senator THURMOND. Judge Thomas, I noticed in your background that you worked with poor and indigent clients as a student attorney in the New Haven Legal Assistance Bureau, covering a broad range of legal issues. Some bar associations have debated the question of making pro bono representation mandatory. Aside from this issue, what are your views as to the importance of pro bono work?

Judge THOMAS. Senator, I would look at pro bono work on two levels, first the need of the individuals. I think there are individuals in our society who, for whatever reasons and a variety of reasons, primarily socioeconomic reasons, cannot afford the kind of representation that they deserve or that they need.

I think it is important for all of us in the society to feel and to know that our judicial system is open to everyone, and the representation of poor or indigent individuals, I think, is critical to that, and it says a lot about our system.

The second point is this: I think it is important, as I indicated earlier, for those of us who have gained so much from this society to give back. What I was attempting to do while I was in law school, as well as any number of friends of mine, is to take the opportunities, the abilities, the analytical skills, the energy that we had as law students and to translate that into concrete help for people who needed things, such as how to get their welfare check, how to get a pair of shoes, how to keep from being evicted, how to get their driver's license.

Those are very basic things, and they may not be the sorts of things that will change the judicial landscape, but for those indi-

viduals it was critical and I felt a sense of satisfaction, a sense that I was giving back when I was able to work at New Haven Legal Assistance.

Senator THURMOND. Judge Thomas, early in your life, you personally struggled to overcome difficult circumstances. You have prevailed over many obstacles to attain great success. As a result of this, are there any special qualities that you believe you would bring to the Supreme Court, if you are confirmed?

Judge THOMAS. Senator, first, with respect to the opportunities that I have had and the help that I have gotten from other people, and as I noted in my opening statement, there have been just countless numbers of individuals who have helped me when I needed help.

I can remember, for example, wanting to take a reading course and not having the money, and I remember someone, still to this day, someone I don't know left \$300 for me to take that reading course in 1970 or 1971. So, the people who have helped me have been countless. But if there is one thing that I have learned, it is that you have to commit yourself to working hard, and you have to understand that that alone will not do it.

But going to the Court, the experience that I would bring is something that I said earlier today, and that is that I feel that, since coming from Savannah, from Pin Point, and being in various places in the country, that my journey has not only been a journey geographically, it has also been one demographically.

It has been one that required me to at some point touch on virtually every aspect, every level of our country, from people who couldn't read and write to people who were extremely literate, from people who had no money to people who were very wealthy. So, what I bring to this Court, I believe, is an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country.

Senator THURMOND. Judge Thomas, the power of the judiciary is limited by article III of the Constitution to cases and controversies. Its jurisdiction is not unlimited, as the Court must decide disputes between parties. Could you please describe the limitations on Federal jurisdiction and what role that would play in hearing cases before the Court?

Judge THOMAS. Senator, I think it is important for any judge to ask that critical question, what authority do I have or what jurisdiction do I have to review this case or to adjudicate this case. I think that is important, and that is critical in the judge being able to restrain himself and rightfully restrain himself. I do that myself, and in my own cases, either explicitly or implicitly, go through that sort of analysis and self-questioning.

Senator THURMOND. Judge Thomas, how would you resolve a conflict between your own conscience or your own sense of justice and the clear meaning of a statutory or constitutional provision?

Judge THOMAS. Senator, if I was unable to adjudicate a case impartially, I don't think that—in fact, I would consider recusing myself from that case, and probably would or more likely would. I think it is essential that a judge be impartial.

With respect to my own personal views, my views have no place, my personal views have no place in adjudication. The object of ad-

judicating a statute, or interpreting a statute, or applying a statute is to determine the intent of this body, the intent of the legislature, whether or not one would agree, if one were in a policy position, with that intent or with that policy. It is the will of the legislature.

Senator THURMOND. Judge Thomas, in an effort to provide the public with a more accurate and fair understanding of what actually occurs in the court room, the Judicial Conference has recently authorized a 3-year program to allow photographing, recording, and broadcasting of civil proceedings in certain Federal courts.

As you are aware, many State courts have also permitted the use of cameras in the court room. Of course, this situation must be carefully balanced, to insure that the integrity of the court room is not compromised, in an effort to provide the public with better information. Judge Thomas, could you provide us with any comments you may have on the use of cameras in the court room?

Judge THOMAS. Of course, Senator, at our court, we are an appellate court, and there isn't much activity, other than fairly intricate and detailed oral arguments. But I would have no personal objection—of course, I can't speak for the other judges or for the courts—to cameras being in courts, as long as they were unobtrusive and did not disrupt the proceedings.

For the life of me, though, I can't imagine how someone would spend any significant amount of time watching a program that involves oral arguments in appellate cases. After they have had their fill of three or four FERC cases, I think that they would probably tune out.

Senator THURMOND. Judge Thomas, the concept of judicial immunity is deeply imbedded in our common law heritage. Judicial immunity insures that judicial officers will be free to make appropriate decisions, without the fear of reprisal from the parties involved in the lawsuits. If judges are subjected to legal actions based on their decisions, what impact would this have on the independence of the judiciary?

Judge THOMAS. Senator, I think that when judges engage in conduct that is inappropriate, the grievance process seems to work well. Of course, we have our own Code of Judicial Conduct. I would be concerned, if a judge is put in the position where he or she feels that the judge could not make a decision, without fear of a lawsuit. It is important that a judge be able to impartially and objectively rule on cases, without the external pressures that are not relevant to that particular case.

Senator THURMOND. Judge Thomas, some have recommended imposing a requirement that the losing parties in a lawsuit be responsible for the legal fees of the opposing party, in an effort to reduce frivolous lawsuits. Do you think that such a proposal would chill the filing of meritorious lawsuits, because of the fear of such financial sanctions if a party should lose?

Judge THOMAS. I think that one should be concerned that if a change in the manner in which legal fees are paid would chill the filing or the litigation in appropriate cases. I have not studied that particular issue, but my concern would be that our system has seemed to work well, and there may be instances in which individuals may think that there have been abuses. But I would be careful in changing the system wholesale, without understanding what the

unintended consequences could be, and indeed having a chilling effect on litigation in appropriate cases might well be such one unintended consequence.

Senator THURMOND. Judge Thomas, if you are confirmed, what do you believe will be the most rewarding aspect of serving on our Nation's highest court?

Judge THOMAS. I think the reward, Senator, for being entrusted with that great a responsibility is actually discharging that responsibility in a dignified, professional and judicial or judicious way, and to realize that you are doing all you can to preserve and protect the Constitution and the freedoms of the people in our country. I think the reward itself is in the doing of the job and doing it right.

Senator THURMOND. Judge Thomas, international drug cartel members have sometimes avoided prosecution as a result of the difficulty of finding the appropriate forum of prosecution. International drug courts have been discussed as an option. Would you discuss whether you believe our Nation's concept of due process can be reconciled with other countries' principles of what constitutes due process, if such a court was implemented?

Judge THOMAS. Senator, I think that our notions of due process in criminal cases is so imbedded and so important in our way of life and important to our way of life and to us, that I would be concerned if there was any diminution of our respect for those rights and our regard for those rights in the creation of other tribunals.

Senator THURMOND. Judge Thomas, you mentioned yesterday in your opening statement that you wished your grandparents, who were a major influence in your life, could be here today. What do you think your grandfather would say, and what advice would he give you?

Judge THOMAS. Well, I used to go back home and visit him after I was a member of the Reagan administration, and the one thing he would always say is, "Tell that Mr. Reagan don't cut off my social security." [Laughter.]

Senator KENNEDY. What did you say? [Laughter.]

Judge THOMAS. I told him I would look out for him and make sure that didn't happen. He was a wonderful man. I can only repeat, the last time I saw my grandfather was in the hospital, we were visiting my grandmother, who was ill, and they both died. They died about a month apart.

I can remember having had a long conversation with him in the lobby of the hospital, St. Joseph's Hospital in Savannah, and the elevator door, he marched me to the elevator and I was waiting on the elevator and we were talking away, and his final words to me, because I was complaining about the difficulty of doing my job and the criticisms and thinking about giving up, and his last words to me, as I can remember, in 1983, February of 1983, was "Stand up for what you believe in," and I think he would give me the same advice.

Senator THURMOND. Judge Thomas, in a speech before the Palm Beach Chamber of Commerce in 1988, you spoke about the implementation of civil rights legislation and its complex relationship between Congress and the executive branch. Would you care to

expand on this for us and include the courts in describing the roles of the three branches of Government in the area of civil rights?

Judge THOMAS. I think that we have an obligation in this country, and I have tried to do that in writings and speeches and efforts to open this country up to everyone, and we have an obligation to aggressively enforce laws that require people to not discriminate, to enforce laws that say you can't treat a person arbitrarily, to push for programs that say let's open up our society.

Now, there is disagreement on how far you should go and what is the precise approach, but there is no disagreement that we have got to eradicate discrimination, and I think all three branches have a role in that. I also believe that we have got to open up doors, and there may be disagreements over that, but it has just got to happen.

I don't think that we can be content in this society, when the gap between have's and have not's continues to expand, and I don't propose to have all the answers and I am sure that there will be debates about how best to do that and whether or not there would be drawbacks to a certain approach, but at bottom I do know it has got to be done.

Senator THURMOND. Judge Thomas, would you please give us your view of the role of antitrust today, including those antitrust issues which you believe more seriously affect competition and the consumer.

Judge THOMAS. Senator, I think it is important that we recognize that, in a country such as ours, where we have an economy and a free enterprise system that has the capacity to absorb a variety of individuals and to allow people to participate, a small business person like my grandfather, that it is important to keep that economy open to access and open to competition, and I think that the antitrust laws are important. I think they are important for those individuals who do want access, and I think that they are important for individuals who use the products of that process, from a price standpoint, quality standpoint, and efficiency standpoint.

Senator THURMOND. I don't have any more questions at this time. I would like to take this opportunity to commend you for your calmness, steadfastness, and courtesy in answering questions of the members of this committee.

Judge THOMAS. Thank you, Senator.

The CHAIRMAN. Senator Kennedy.

Senator KENNEDY. Judge Thomas, one of the Supreme Court's most important roles under the Constitution is to resolve the disputes between the President and the Congress about the limits of executive power. The role of the Court has grown more independent, important in the past quarter century because we have had a divided government for most of the last 25 years.

The Framers of the Constitution believed that unchecked executive power is one of the greatest threats to freedom and individual liberty. You yourself have made many strong statements in your speeches about the need for limited government. Yet you harshly criticized a Supreme Court in 1988, *Morrison v. Olson*, which upheld the constitutionality of a statute authorizing the appointment of independent special prosecutors to investigate criminal conduct by high officials in the executive branch.